

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LEIGHTON TECHNOLOGIES LLC,)
)
Plaintiff,)
)
vs) Case No.
) 04-cv-02496 (CM) (LMS)
OBERTHUR CARD SYSTEMS, S.A.,)
OBERTHUR CARD SYSTEMS OF)
AMERICA CORPORATION,)
)
Defendants.)

ORIGINAL

Deposition of Richard Smith

taken on

Wednesday, November 16, 2005

Reported by: Emma P.J. White

1 Wednesday, November 16, 2005; London, England

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3
4 EXAMINATION

5
6 BY MR. JAMES JACOBS:

7 Q. Sort of like in reverse order, the Midland
8 card which is going to be marked Exhibit 1008, do you
9 understand, sir, what a contactless card is?

10 A. I do.

11 Q. Is the Midland Exhibit 1008 a contactless
12 card?

13 A. It is.

14 Q. Was that card, the one we are looking at,
15 Exhibit 1008, made before 1994?

16 A. It was.

17 Q. Looking at Exhibit D, and the page with
18 the Borer card drawing, and I refer you to the same
19 phraseology that Mr. Jacobs read to you earlier:

20 "Oakwood technicians are skilled in
21 the use of PVC polyester and epoxy
22 substrates, and have packaged most
23 sophisticated micro chips within the
24 core structure of a card".

25 Do you see that?

1 A. I do.

2 Q. What was your purpose for putting that
3 sentence in here?

4 A. This was to indicate that we were
5 experienced in packaging RFID, or contactless cards.

6 Q. It was your intent when you wrote this to
7 explain to people who would read your Exhibit D that
8 you could put a microchip into a plastic laminated
9 card? Is that correct?

10 MR. BLAIR JACOBS: Objection to form, leading.

11 MR. JAMES JACOBS: Let me rephrase the
12 question.

13 BY MR. JAMES JACOBS:

14 Q. Was it your purpose in putting in the sentence
15 that we just read into Exhibit D, to indicate to
16 people who would read Exhibit D that you could put a
17 microchip into a plastic laminated card?

18 MR. BLAIR JACOBS: Objection to form, leading.
19 You can answer.

20 THE WITNESS: I will answer it this way; to
21 place any form of indication in a brochure regarding
22 the packaging of such cards would be limited to very,
23 very few people within the industry. Therefore,
24 a few well-chosen words would have much meaning to
25 the experts within the industry. This brochure was

1 not sent to retail or public distribution, but to
2 people within the knowledge and the understanding of
3 the industry.

4 **BY MR. JAMES JACOBS:**

5 Q. And what was your belief that a person in
6 the industry would take away from this sentence?

7 MR. BLAIR JACOBS: Calls for speculation.

8 MR. JAMES JACOBS: No, I asked him what his
9 belief was that a person would take away from this.

10 MR. BLAIR JACOBS: Lacks foundation, calls
11 for speculation. Objection.

12 MR. JAMES JACOBS: All right, I will take it.
13 Did you have a belief as -- strike that.

14 (RECORD READ)

15 **BY MR. JAMES JACOBS:**

16 Q. What was your belief, if any, that a person in
17 the industry would take away from this sentence?

18 A. The important words within that sentence
19 are the terms, "Core structure". If we reflect,
20 there are two types of microchip card, principally.
21 The surface contact chip, which is machined and
22 fitted after lamination, and the contactless
23 microchip card which has the operating medium
24 inserted within the core structure, and therefore,
25 the term, "Core structure", would indicate a card of

1 the contactless variety.

2 MR. JAMES JACOBS: Would you read back the
3 question, and then I'll ask if the witness has
4 anything to add to it.

5 (RECORD READ)

6 BY MR. JAMES JACOBS:

7 Q. Do you want to add anything to that?

8 A. I could add to that, that they would take
9 away from the sentence that we had the ability to
10 produce contactless cards.

11 Q. Do you recall Mr. Jacobs asked you some
12 questions about whether, in the Borer card, and that
13 was Exhibit 1007, the coils had terminals? Do you
14 recall that question?

15 A. I do.

16 Q. From your point of view as a manufacturer
17 of machines to make plastic laminated cards, and
18 also as a person experienced in making plastic
19 laminated cards, does it make any difference whether
20 the embedded elements in a plastic laminated card
21 have terminals or not?

22 A. No, it doesn't make any difference because
23 I take the Borer card and a contactless card neither
24 to have contact elements.

25 Q. Again referring to the Borer card Exhibit

1 1007, I notice the outer -- the layer which you have
2 identified as layer F, being the printed layer, has
3 printing on the layer as shown in its unlaminated
4 state. Is that correct?

5 A. That's correct.

6 Q. Was it the practice to put printing on a layer
7 prior to lamination?

8 A. Yes. That is always the method of production
9 of laminated cards.

10 Q. Again referring to Exhibit 1007 and the
11 physical Borer card, and also referring to Exhibit
12 D, the page with the Borer drawing, the drawing of
13 the Borer card, the inductive coils sit on a plastic
14 substrate; correct?

15 A. That's correct.

16 Q. And that plastic substrate is inserted into a
17 cut-out in what we have termed Layer 4, correct?

18 A. That's correct.

19 Q. Do you recall your testimony as saying
20 that in your view Layer 5 was a core sheet?

21 A. I will answer the question by saying the
22 diagram as shown in Exhibit D is an indicative
23 diagram of a typical card assembly. There is no
24 strict relevance of the number of layers of material.
25 It could vary, depending on the application.

1 Therefore, 5 can be a core layer or can be a
2 transparent layer.

3 Q. Okay, but as specifically shown here it is
4 a core layer?

5 A. Indeed.

6 Q. Does that core layer directly contact the
7 coils themselves?

8 MR. BLAIR JACOBS: Object to form, leading.
9 Lacks foundation.

10 MR. JAMES JACOBS: You say it is leading?

11 MR. BLAIR JACOBS: Well, you are suggesting
12 to him that it does, and that is usually what the
13 objection, "Leading", means, but secondly, you are
14 using words from the patent that have been defined by
15 the court and that is why I objected with, "Lacks
16 foundation", because without showing him what that
17 word means, you know, it makes the question
18 meaningless, so that is why --

19 MR. JAMES JACOBS: So, all the questions you
20 asked on that, Mr. Jacobs, are meaningless?

21 MR. BLAIR JACOBS: With regard to directly or
22 with regard to elements in the patent?

23 MR. JAMES JACOBS: No. You used the word,
24 "Core", which was also --

25 MR. BLAIR JACOBS: If you recall, Mr. Jacobs,

1 if you recall I had him define core sheet and then
2 after he had defined it I understood what his view was
3 on it. Then I asked him questions on it. You have
4 not done that. That is why I objected as lacking in
5 foundation.

6 MR. JAMES JACOBS: All right.

7 BY MR. JAMES JACOBS:

8 Q. Let me ask you the question, sir. Does the
9 layer number 5 touch the coils?

10 A. Yes, it would.

11 Q. Layer number 5 being the bottom layer,
12 sir?

13 A. That's correct.

14 Q. Is there not a substrate between the coils
15 and the bottom layer?

16 A. I need to clarify the question here. In
17 the instance we have in the exhibit the layer
18 containing the coils would have the coils on the
19 upper surface, and therefore layer 5 would contact
20 the underside of the coil layer.

21 Q. The coil layer but does not --

22 A. But not the coils themselves.

23 Q. In order that the record is clear, let me
24 rephrase the question so that you can answer it.
25 Does the layer number 5, which you have called the,

1 "Core", one of the core sheets, contact the coils
2 themselves?

3 A. They do not.

4 Q. Between the coils and layer number 5, there is
5 a plastic substrate; correct?

6 A. That's correct.

7 Q. Referring to your Exhibit D, sir, again,
8 the drawing of the Borer card, in that drawing does
9 the layer we have termed, "Layer 4", have a cut-out
10 which accepts the plastic substrate bearing the
11 coils?

12 A. Yes, it does.

13 Q. I know Mr. Jacobs asked you this question
14 but I can't remember your answer; what is your
15 definition of a core sheet?

16 A. A core sheet is usually an opaque layer
17 manufactured from PVC material having a higher
18 density than that of the surface transparent layers,
19 and is usually used in this application to contain
20 what we have described earlier as foreign bodies, or
21 embedded materials.

22 MR. JAMES JACOBS: I don't think I have
23 anything else at this point.

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